

IN RE: PETITION FOR ZONING VARIANCE
NE/S Greenspring Avenue, 265'
SE c/l Walnut Avenue
(12387 Greenspring Ave.)
4th Election District
3rd Councilmanic District
Arkady Teplitsky, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-64-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a side yard setback of two feet in lieu of the required seven feet, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, Arkady Teplitsky, appeared and testified and was represented by Howard L. Alderman, Jr., Esquire. There was one Protes-tant, Mr. W.M. Walk, who also testified.

The evidence and testimony tend to indicate that the Petitioner owns two lots, zoned R.C. 5, containing approximately .75 of an acre each. The lots front on Greenspring Avenue. The subject house was built by the original owner in about 1955. The garage is to the rear and closest to the common property line for both lots. The garage is currently beyond the required setback and, therefore, violates the Baltimore County Zoning Regulations (B.C.Z.R.).

The testimony establishes that the Petitioner would suffer a hardship if he was now required to move the garage that has been in place for more than thirty (30) years. The violation also causes the Petitioner a hard-ship in that the Petitioner's second mortgage will not be approved with an outstanding violation.

The Protestant is upset because he believes the Petitioner wants a second house built on the vacant lot. He claims there is no water in the area and the houses are too close together. He does not want to have problems with his well because of the new house.

The variance requested is not for a new house or even the vacant lot. The request is for the lot with the current house. It would be improper for the Zoning Commissioner to deny a variance because of possi-ble development on an adjoining property.

Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner and/or Deputy Zoning Commissioner shall have the power to create variances from an area regula-tion where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

Section 307 also states that relief may be granted only if it creates no substantial injury to public health, safety and general welfare.

In reviewing the Petition, it must be kept in mind that "(t)he stan-dard for granting a variance... is... whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley.

The question, therefore, is whether it was fairly debatable that the evidence shows strict compliance with the regulations would result in practical difficulty or unreasonable hardship. I find the evidence is that a hardship does exist on the subject site.

After due consideration of the testimony and evidence presented, it is clear that strict compliance with the requirements would unreasonably prevent use of the property for a permitted purpose; that substantial injustice would be done to the owners, and that the granting of a variance would be in the spirit of the law and would not create substantial detri-ment to the public good.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the re-quested variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of September 1988 that the Petition for Zoning Variance to permit a side yard setback of two (2) feet in lieu of the re-quired seven (7) feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restriction:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; howev-er, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has ex-pired. If, for whatever reason, this Order is re-verses, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH/mnn
cc: Peoples Counsel
Howard L. Alderman, Jr., Esquire
Mr. Walter M. Walk

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3333

J. Robert Haines
Zoning Commissioner

September 29, 1988

Howard L. Alderman, Jr., Esquire
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Zoning Variance
Case No. 89-64A

Dear Mr. Alderman:

Enclosed please find the decision rendered on the above captioned case. The Petition for Zoning Variance has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3391.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH/mnn
cc: Peoples Counsel
Arkady Teplitsky, 12387 Greenspring Avenue, Owings Mills, Md. 21117
Mr. Walter M. Walk, 12501 Greenspring Avenue, Owings Mills, Md. 21117

PETITION FOR ZONING VARIANCE
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 103.3 (IIIC.3 (1953)), as amended) to permit a side yard setback of two(2) feet in lieu of the required seven (7) feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. The existing house and attached garage, being known as 12387 Greenspring Avenue, were acquired by Petitioners in 1986.
2. The requirement of moving a structured purchased, but not constructed by Petitioners, to conform to applicable setback requirements would result in severe economic hardship to Petitioners.

advertised as prescribed by Zoning Regulations.
I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Arkady Teplitsky

(Type or Print Name)

Signature

Tatiana Teplitsky

(Type or Print Name)

Signature

12387 Greenspring Avenue

Address

Phone No.

Owings Mills, Maryland 21117

City and State

Name, address and phone number of legal owner(s) representative to be contacted

Julius W. Lichter, Esq.

Suite 113, 305 W. Chesapeake Avenue

Towson, Maryland 21204

Address

Phone No.

321-0600

ORDERED By The Zoning Commissioner of Baltimore County, this 29th day of September 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 1st day of September 1988, at 1:30 o'clock.

ESTIMATED LENGTH
MCH. 17
REVIEWED BY: CRR/MK
6/10/87

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3333

J. Robert Haines
Zoning Commissioner

Date: 8/30/88

Mr. & Mrs. Arkady Teplitsky
12387 Greenspring Avenue
Owings Mills, Maryland 21117

Re: Petition for Zoning Variance
CASE NUMBER 89-64-A
NE/S Greenspring Avenue, 265' SE c/l Walnut Avenue
(12387 Greenspring Avenue)
4th Election District - 3rd Councilmanic
Petitioner(s): Arkady Teplitsky, et ux
HEARING SCHEDULED WEDNESDAY, SEPTEMBER 14, 1988 at 2:30 pm.

Date: Mr. & Mrs. Teplitsky

Please be advised that \$36.26 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, 100 minutes before

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 059113

DATE: 9/14/88

ACCOUNT: R-CI-415-CCO

AMOUNT: \$ 36.26

RECEIVED BY: Arkady Teplitsky

FOR: Posting & Advertising (89-64-A)

B 0122*****862618-144F

VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

89-64-A

District: 4th
Date of Posting: August 22, 1988
Posted for: Variance
Petitioner: Arkady Teplitsky, et ux
Location of property: NE/S Greenspring Ave., 265' SE c/l Walnut Ave.
12387 Greenspring Ave.
Location of Sign: In front of 12387 Greenspring Ave.

Remarks:
Posted by: S.J. Anta
Date of return: August 30, 1988
Number of Signs: 1

"DUPLICATE"
CERTIFICATE OF PUBLICATION

TOWSON, MD., August 18, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in OWINGS MILLS TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on August 18, 1988.

OWINGS MILLS TIMES,

S. Zebe Orlan
Publisher

\$35.63

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 100 W. Chesapeake Avenue in Towson, Maryland on Wednesday, September 14, 1988 at 2:30 pm.
Petition for Zoning Variance
Case number: 89-64-A
NE/S Greenspring Ave., 265' SE c/l Walnut Ave.
(12387 Greenspring Avenue)
4th Election District
3rd Councilmanic District
Petitioner(s): Arkady Teplitsky, et ux
Hearing scheduled: Wednesday, September 14, 1988 at 2:30 pm.
Variance to permit a side yard setback of 2 feet in lieu of the required 7 feet.
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, retention of said permit during the appeal period. Such request must be in writing and received in the office by the date of the hearing set above or presented at the hearing.
J. ROBERT HAINES
Zoning Commissioner of Baltimore County
1315 Aug 18

VT ASSOCIATES, INC.
SURVEYING & ENGINEERING

4932 HAZELWOOD AVENUE
BALTIMORE, MD 21206
856-3001

PROPERTY DESCRIPTION (Zoning Variance)

BEGINNING on the northeast side of Greenspring Avenue, 70 feet wide, at the distance of 265 feet, more or less, in a southeasterly direction from the extended centerline of Walnut Avenue as shown on Baltimore County D.P.W. Road Drawing No. 52-2084 (1 of 2). Being known and designated as Lot 10, Block 'A' as shown on a Plat entitled "Dover Downs", which plat is recorded among the Land Records of Baltimore County in Plat Book G.L.B. No. 19, folios 52 and 53. The improvements thereon being known as No. 12387 Greenspring Avenue.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3554
J. Robert Haines
Zoning Commissioner

July 18, 1988

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER 89-64-A
NE/S Greenspring Avenue, 265' SE c/1 Walnut Avenue
(12387 Greenspring Avenue)
4th Election District - 2nd Councilward
Petitioner(s) Arkady Teplitsky, et ux
HEARING SCHEDULED: WEDNESDAY, SEPTEMBER 14, 1988 at 2:30 p.m.

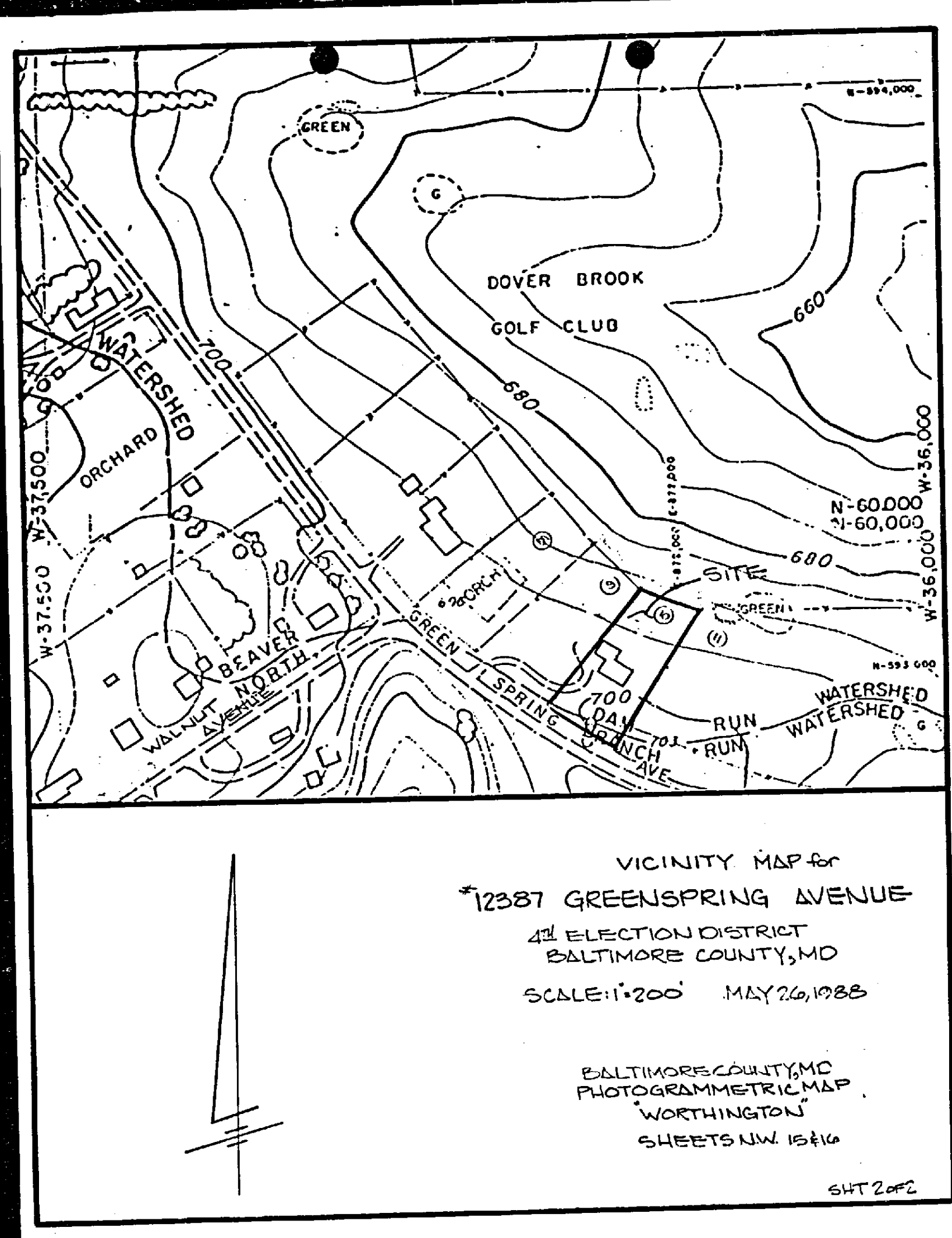
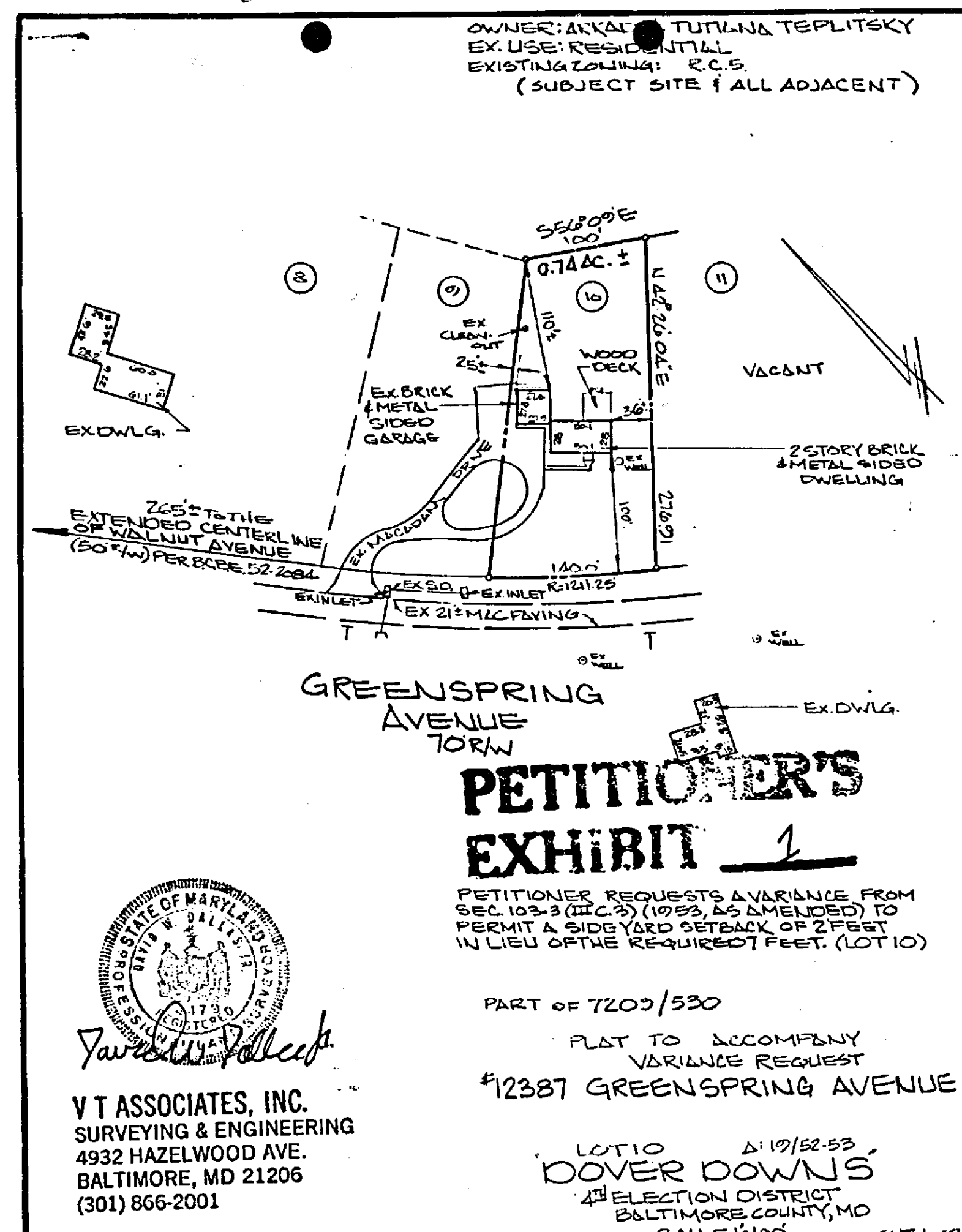
Variance to permit a side yard setback of 2 feet in lieu of the required 7 feet.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County
cc: Arkady Teplitsky, et ux
Julius W. Lichter, Esq.
File



Dennis F. Rasmussen
County Executive



89-64-A
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
22nd day of June, 1988.

J. Robert Haines
Zoning Commissioner

Petitioner: Arkady Teplitsky, et ux
Petitioner's Attorney: Julius W. Lichter

Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

July 18, 1988



Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number

391, 413, 438, 439, 442, 443, 444, 446, 447, 448, 450, 451, 452, 453, 454,
455, 456, and 457.

Very truly yours,

Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEN/RF/cps

LEVIN, GANN & HANKIN

J. Robert Haines, Zoning Commissioner
Page 2
September 19, 1988

applies to the showing of hardship necessary for a use variance. The Maryland Court of Appeals has held that this "rule has been relaxed where there has been an application for area variance such as here, as distinguished from a use variance as in Kewick." Pengerle v. Board of Co. Comm'rs. for Frederick Co., 262 Md. 1, 276 A.2d 646, 656 (1971). (Emphasis added).

Clearly, in the instant Petition, an area variance is sought. As such, the criteria articulated by Judge Davidson in the Chesapeake Beach case for area variances should be applied. No showing of hardship is necessary. Rather, the practical difficulty which will not do substantial injustice to other property owners, as described in the uncontroverted testimony of Mr. Teplitsky, is the applicable standard. The petitioner should not be bound by the acts of his predecessor, of which he had no knowledge at the time of purchase of the premises, where an area variance is sought. As Mr. Teplitsky noted, the premises were bought at an auction, in their existing condition. We, therefore, request that the side yard variance be granted as soon as possible.

If I can provide you with any additional information in this regard, please call.

Very truly yours,

Howard L. Alderman, Jr.

HLA/fl
Enclosures

cc: Mr. and Mrs. Arkady Teplitsky

LAW OFFICES
LEVIN, GANN & HANKIN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
FAX 301-296-2801
September 19, 1988

HAND-DELIVERED

J. Robert Haines, Zoning Commissioner
Baltimore County Office of Planning & Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Item 446 Case No. 89-64-A
Arkady Teplitsky, et ux
Petition for Side Yard Zoning Variance

Dear Commissioner Haines:

At the hearing held on the above-referenced Petition, Wednesday, September 14, 1988, you requested that I submit to you the legal authorities on which I relied in support of the Petition. Enclosed, please find copies of the applicable case law.

You asked specifically whether the Petitioners should be bound by the acts of their predecessors in title. The general rule is that if the hardship which forms the basis of the variance was created by the petitioner or his predecessor in title, such will be regarded as self-created and relief will, therefore, be denied. Wilson v. Mayor & Comm'rs. of Elkton, 35 Md. App. 417, 371 A.2d 443, 448 (1977). This is the general rule as applied to instances of a use variance. As Judge Davidson opined in Anderson v. Board of Appeals, Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974), the requisite hardship for a use variance must not be the result of the applicant's own actions.

Likewise, the general rule is that where one purchases realty intending to seek a variance from the applicable zoning restrictions, the new owner cannot assert that the restrictions, of which he had knowledge at settlement, present the requisite hardship to justify a later request for variance. Gleason v. Kewick, 197 Md. 46, 78 A.2d 164, 166 (1951). Again, this rule

RECEIVED
SEP 20 1988
ZONING OFFICE

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

August 31, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Julius W. Lichter, Esquire
305 W. Chesapeake Avenue, Suite 113
Towson, MD 21204

RE: Item No. 446 Case No. 89-64-A
Petitioner: Arkady Teplitsky, et ux
Petition for Zoning Variance

Dear Mr. Lichter:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer, Jr.
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:scj

Enclosures

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reineke
Chief

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: Arkady Teplitsky, et ux

Location: NE/S Greenspring Avenue, 265' SE c/1 Walnut Avenue

12387 Greenspring Avenue

Item No.: 446

Zoning Agenda: Meeting of 6/21/88

Gentlemen:

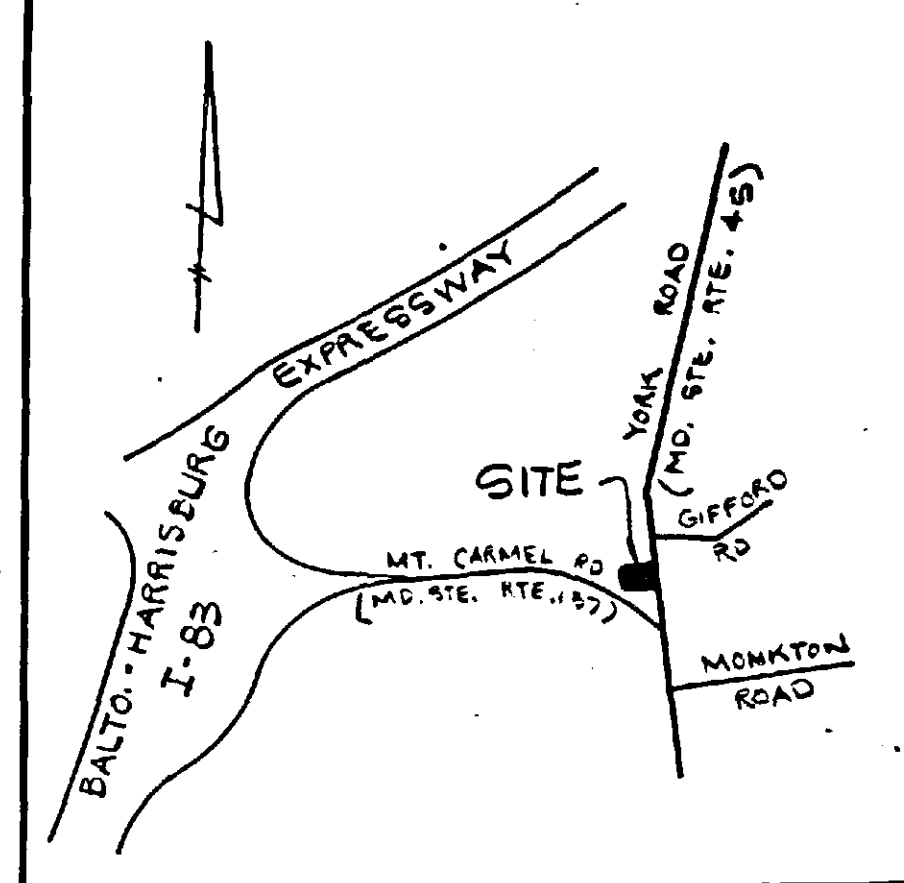
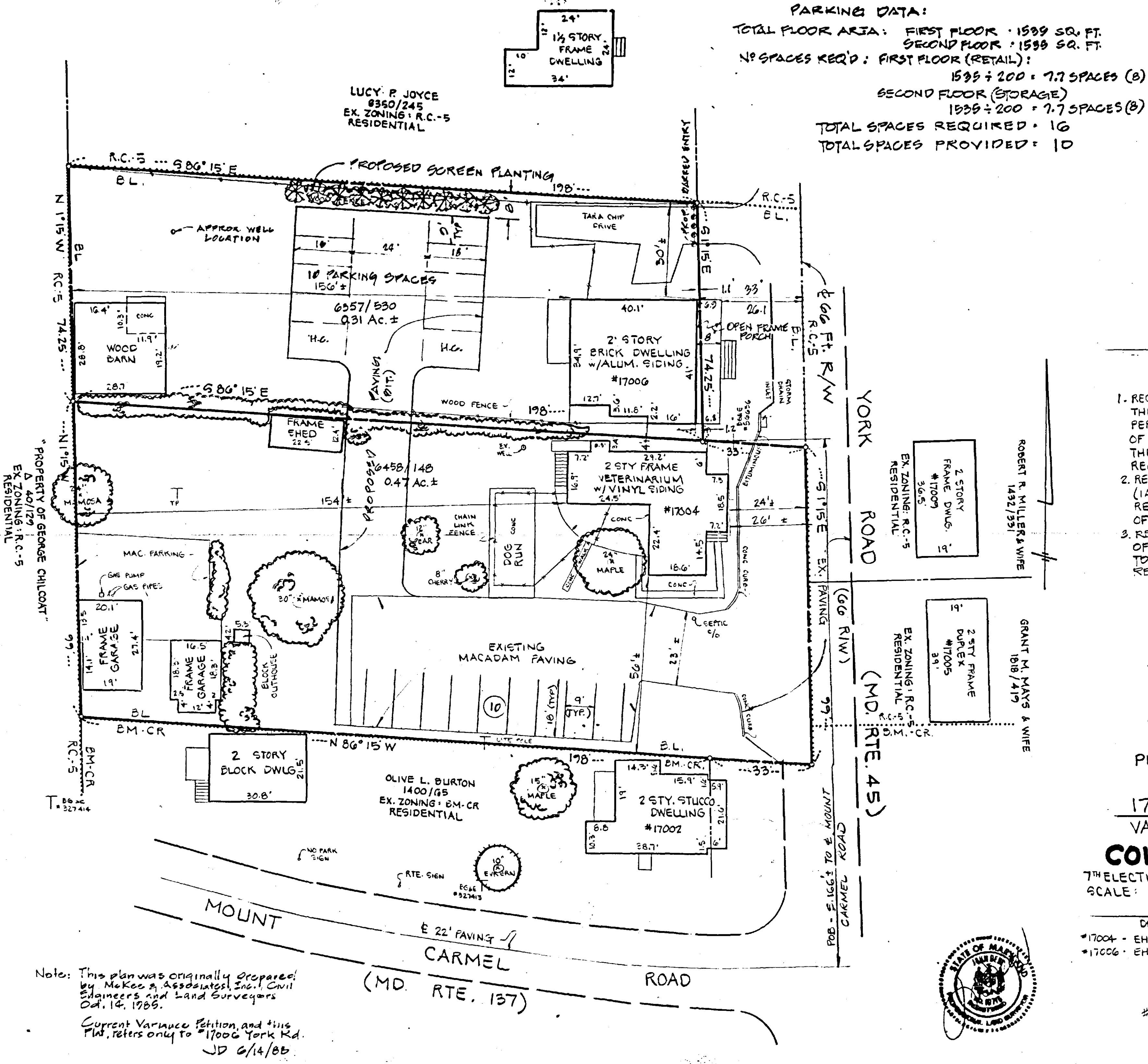
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
2. A second means of vehicle access is required for the site.
3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
6. Site plans are approved, as drawn.
7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: [Signature] Noted and Approved: [Signature]
Planning Group
Special Inspection Division

/s/

A black and white photograph showing a rustic wooden fence made of horizontal rails and vertical posts. The fence runs across the middle ground. To the left, a large, dark tree trunk is prominent. The background is filled with dense, leafy trees and foliage, creating a textured, somewhat overexposed appearance. The foreground is dark and appears to be a grassy or dirt area.



REQUESTED VARIANCES:

1. REQUESTING A VARIANCE TO SECTION 232.1 OF THE BALTIMORE CO. ZONING REGULATIONS TO PERMIT A FRONT YARD SETBACK OF 0' IN LIEU OF THE REQUIRED 10' AND A 26.1' SETBACK TO THE STREET CENTERLINE IN LIEU OF THE REQUIRED 40'.
2. REQUESTING A VARIANCE TO SECTION 232.2 b (1A04.3B.3) OF THE BALTIMORE COUNTY ZONING REGULATIONS TO PERMIT A SIDE YARD SETBACK OF 30' IN LIEU OF THE REQUIRED 50'.
3. REQUESTING A VARIANCE TO SECTION 409.2b OF THE BALTIMORE COUNTY ZONING REGULATIONS TO ALLOW 10 PARKING SPACES IN LIEU OF THE REQUIRED 16 PARKING SPACES.

PETITIONER'S EXHIBIT 1

PLAT TO ACCOMPANY
 PETITION FOR
17006 YORK ROAD
 VARIANCE TO ZONING
 FOR THE
COHN PROPERTY
 7TH ELECTION DISTRICT BALTIMORE CO., MD
 SCALE: 1" = 20' JUNE 14, 1988
 OWNER
 DR. STANLEY A. & KAREN P COHN
 *17004 - EHK, JR. 6458/148 07-08-065250 COMMERCIAL
 *17006 - EHK, JR. 6357/530 07-08-065200 RESIDENTIAL



Note: This plan was originally prepared by McKee & Associates, Inc., Civil Engineers and Land Surveyors Oct. 14, 1985.
 Current Variance Petition and this Plat refers only to 17006 York Rd.
 JD 6/14/88

JOHN DEW
 16350 MATTHEWS RD.
 MONKTON, MD. 21111